tions, as well as other requirements establishing conditions precedent to the right of the covenantee, are common and are held not to invalidate the covenants.[7] On the whole, it would seem that the doctrine of exempting covenants for perpetual renewal from the application of the rule against perpetuities must be regarded as a pure exception.[8] Indeed, some American courts have refused to recognize it.[9] It is impossible, therefore, to argue from this exceptional doctrine as a basis. A covenant to convey a fee at a remote time clearly creates an interest in land. That interest is subject, however, to the condition that the covenantee shall elect to take a conveyance of the fee; and if the covenant permits the condition to be fulfilled at too remote a time, the rule against perpetuities is infringed. It is well settled that to be valid an executory interest in a legal estate created by means of a shifting or springing use must be so limited that it must necessarily take effect, if at all, within the period required by the rule.[10] In the case of the covenant to convey there is a springing limitation of the equitable estate, since upon the election of the covenantee to purchase, the equitable estate passes from the covenantor and vests in him; and if such a limitation of the legal estate by way of springing or shifting use is void, it is hard to escape the conclusion that the same must be true in the case of the equitable estate. In other words, there is no difference, for the purposes which the rule against perpetuities is designed to accomplish, between an option to purchase and what is called a conditional limitation; and both must take effect within the time required by that rule.

RIGHTS RESULTING FROM ADVERSE POSSESSION OF ONE CLAIMING LESS THAN THE FEE. — An adverse possessor usually claims the fee; but in some cases he admits the title of a third party, while disputing that of the real owner. In such cases the question arises as to whether he acquires title for himself against all the world by virtue of a possession adverse to the true owner. It is settled in cases where one enters as life tenant under a void will and remains for the statutory period that the true owner is barred, but that the life tenant and his privies cannot dispute the title in fee simple of the remainder man under the will.[1] The same rule holds in the case of one who enters as life tenant under a deed from a grantor who has no title.[2] An interesting extension of the doctrine to be deduced from these cases is suggested by a case decided a short time ago in Minnesota. The defendant entered the plaintiff's land thinking that it belonged to the United States and meaning to acquire a homestead. He remained in possession longer than the statutory period, when the plaintiff attempted to eject him. The court held that the plaintiff was barred, and intimated that the defendant had acquired the fee. *Maas* v. *Burdetzke*, 101 N. W. Rep. 182.

Two theories have been advanced to explain these cases. One is that the adverse possessor is estopped from denying the title of the one under whom he has been claiming. The other is that the adverse possessor is

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[7] See Finch *v.* Underwood, 2 Ch. D. 310; Sweet *v.* Anderson, 2 Bro. P. C. 256.
[8] See London, etc., Railway *v.* Gomm, *supra.*
[9] Morrison *v.* Rossignol, 5 Cal. 64.
[10] Sug. Gilb. Uses, 3rd ed., 156, 157.

[1] Board *v.* Board, L. R. 9 Q. B. 48.
[2] Dalton *v.* Fitzgerald, [1897] 1 Ch. 440.

analogous to a tortious feoffee, and that the tort may be cured by lapse of time. When cured it leaves the adverse possessor with a clear right to just what he claimed. If he claimed that the fee was in some person other than the true owner, the latter would be barred, and the fee would be in the third person. If the defendant in the principal case filed the usual homestead application and received permission to enter from the government, he would be a mere licensee and could not on either theory dispute the title of the United States. Assuming, however, that he entered without the knowledge or permission of the government, would the mere recognition that it owned the fee be sufficient on either theory to pass the title to the government? The only possible estoppel is *in pais*. This form of estoppel arises out of either contract or conduct.[3] Clearly no contract basis exists here, and to create an estoppel from conduct it is essential that one party should have so acted on a representation of the other that it will be a detriment to him to allow the falsity of the representation to be asserted. If there was no relation between the parties, no basis for an estoppel can be found, and the adverse possessor would hold the fee. On the other theory, however, the adverse possessor would get by lapse of time no more than he claimed, which was not the fee, but a right to acquire a homestead patent. Under a regulation of the homestead laws he has lost that right here. As he has claimed for the statutory period that the fee is in the United States, it would, under this theory, acquire the fee, — a result most surprising from a practical standpoint.

COURT'S DISCRETION TO EXCLUDE CUMULATIVE EVIDENCE. — As to how far a judge may exercise his discretion in a jury trial to exclude relevant evidence on the ground that it is merely cumulative, there is a great conflict of opinion except in two classes of cases. It is the uniform rule that expert evidence should be confined within reasonable bounds. From its very nature an indefinite number of witnesses might otherwise be called, each necessitating so much additional expense, vexation, and delay in demonstrating his competency and presenting his theory. Moreover, while expert witnesses may agree as to essentials, they are very apt to differ upon minor matters. These little discrepancies grow in importance with continued repetition until the juror's mind, seizing upon them as the essentials, distrusts all expert testimony as inherently uncertain. Consequently the trial court has been uniformly allowed to exercise discretionary power in limiting the introduction of such testimony.[1] Likewise, when evidence is introduced to prove character or usage, the same rule applies, for if the best witnesses are not believed, others can hardly be hoped to produce conviction.[2]

In all other cases there is an utter lack of harmony. On the one hand, it is contended that such exclusion may render difficult the task of establishing the point in controversy. On the other, it is argued that the time and energy of the court should not be consumed in hearing and sifting an unending mass of evidence, which has little or no probative value. Influenced by these conflicting motives, different jurisdictions have adopted

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[3] Bigelow, Estoppel, 5th ed., 455.

[1] Fraser *v.* Jennison, 42 Mich. 206.

[2] Bonnell *v.* Butler, 23 Conn. 64, 69.